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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/478,131	01/05/2000	JOSEPH NARDOZA	MAT-2C2B	1285

7590 11/04/2004

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EXAMINER
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RAJGURU, UMAKANT K

ART UNIT	PAPER NUMBER
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1711

DATE MAILED: 11/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/478,131	NARDOZA ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Umakant K. Rajguru	1711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 July 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9 and 11-28 is/are pending in the application.
- 4a) Of the above claim(s) 26-28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 & 11-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

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1. A response (to non-final rejection) has been filed on July 09, 2004.
2. Claims 1-9 and 11-28 are presented now for examination.
3. Rejection of claim 12 under 35 USC, 112, 2<sup>nd</sup> paragraph (see item 3 of office action of February 06, 2004) is now withdrawn. That of claim 10 is moot now that the said claim has been cancelled.
4. Newly submitted claims 26-28 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: claims 1-9 and 11-25 are directed to a composition. Claims 26-28 are directed to a kit, which is a different invention.

Inventions I and II are related as mutually exclusive species in an intermediate-final product relationship. Distinctness is proven for claims in this relationship if the intermediate product is useful to make other than the final product (MPEP§806.04(b), 3rd paragraph), and the species are patentably distinct (MPEP§806.04(h)). In the instant case, the intermediate product is deemed to be useful as material for molding and the inventions are deemed patentably distinct since there is nothing on this record to show them to be obvious variants. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions anticipated by the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

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Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim ~~26~~<sup>25</sup>-28 are withdrawn from consideration *WKR* as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

5. Claim 15 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 15 (as now amended) is vague in reciting "includes guar gum" because it is not clear what else, besides ~~g~~ guar gum, is included within the scope of this claim. *WKR*

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 1, 2, 3, 6, 8-22 and 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anton et al (US 4837077) in view of Cottrell et al (US 5532350) and Brander (US 6376034).

8. Claims 4, 5 & 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anton et al (US 4837077) in view of Cottrell et al (US 5532350) and Brander (US 6376034) as applied to claim 1 above, and further in view of Tucker (US 5647300) or Chmielewski (US 6545195).

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9. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Anton et al (US 4837077) in view of Cottrell et al (US 5532350) and Brander (US 6376034) as applied to claim 1 above, and further in view of Goss (US 4622920).

10. In the earlier Office action (of February 06, 2004, in item 5 & 6) claims 3, 4, 5 were inadvertently misplaced. This Office action places them in proper items.

Places refer that Office action for summaries of rejections.

11. Applicant's arguments filed July 09, 2004 have been fully considered but they are not persuasive.

On page 8 (of above paper) the applicants' statement that the composition is formed by the mixing together of granular components. . etc" is not persuasive. The final mixture is granular. That does not mean that all components (which go in to make that mixture) have to be granular.

Applicant's next argument (on same page 8) that "binder (of Anton) is not mixed with polymer" is not persuasive because instant claims are directed to a composition containing specified ingredients which need not be mixed.

Applicants' argument about Cottrell and Brander (on page 9) are also not persuasive. Both are secondary references, relied upon only for their specific disclosures. It is immaterial where the absorbent materials of Cottrell and Brander are used. Examiner therefore disagrees with the applicants in their conclusion (on page 10) that "Anton, Cottrell & Brander all fail to even suggest such a fluid swellable material....". Furthermore it should be noted that instant claims are directed to a composition and not to a children's amusement device. One possible use of

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composition is to make such a device. Examiner has already set forth motivation for combination of Cottrell and Brander with Anton (in earlier Office action of Feb 06, 2004, item 5). Although Cottrell and Brander relate to a different field than that of Anton, they faced and successfully solved the problem (of absorbency and of strength) faced by Anton.

Applicants' arguments about Tucker, Chimielewski and Goss (page 12) are also not persuasive because of similar reasons.

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

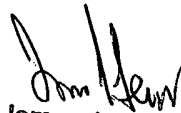
13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to U. K. Rajguru whose telephone number is (571) 272-1077. The examiner can normally be reached on Monday-Friday from 9:30 am to 6:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James J Seidleck can be reached on (571) 272-1078. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
U. K. Rajguru/af  
October 27, 2004

  
James J. Seidleck  
Supervisory Patent Examiner  
Technology Center 1700